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DEC 05 2003

Commission on
Judicial Performance

**STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE**

**INQUIRY CONCERNING
JUDGE DAVID E. WASILENKO
No. 170**

**ANSWER OF JUDGE DAVID W. WASILENKO
TO AMENDED NOTICE OF FORMAL PROCEEDINGS**

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COMES NOW David E. Wasilenko, a judge of the Yuba County Superior Court and answers the Amended Notice of Formal Proceedings as follows:

COUNT ONE

Sheila Messick is the wife of Judge David Wasilenko's first cousin.

On September 11, 1999, Sheila Diane Messick was cited for violating California Vehicle Code §22349(b). On September 16, 1999, Sheila Diane Messick received a notice from the Yuba County Superior Court notifying her that in connection with her traffic citation she was eligible for traffic school and the bail for the traffic citation would be \$145.

On or about September 24, 1999, Sheila Diane Messick went to Judge Wasilenko's chambers to discuss a personal, family matter that was unrelated to any pending court business. According to the interview of Sheila Diane Messick by the Commission on Judicial Performance that took place on February 28, 2003, Ms. Messick described the purpose of the visit as strictly a family matter relating to Ms. Messick's son and daughter-in-law. According to Sheila Diane Messick, the family situation was "traumatic." Judge Wasilenko, as a relative, provided her with some advice relating to the family matter.

It is Judge Wasilenko's recollection that after discussing the family law matter with Ms. Messick, she advised him of a traffic citation she had received. Judge Wasilenko did call for the file from the clerk's office and saw the notification to Ms. Messick that she was eligible for traffic school. Judge Wasilenko did not impose a fine. The bail as set forth in the notification given to Sheila Messick on September 16, 1999 specified the bail amount of \$145. Judge Wasilenko did not grant Ms. Messick's request

was dismissed since it had been corrected. Judge Wasilenko may have waived the \$10 fee but he has no recollection of that fact.

It is Judge Wasilenko's understanding of the law that it is not necessary for a law enforcement official to confirm a correction of a citation for an expired vehicle registration if satisfactory proof of the correction is given to him. Judge Wasilenko recalls Ms. Robinson presented a valid, current registration as evidence of the correction. While Judge Wasilenko and his counsel were not notified of the deposition under oath being taken from Ms. Robinson on April 22, 2003, she testified under penalty of perjury that the registration was renewed shortly after she received the citation.

Judge Wasilenko admits that he has known Heather Robinson for many years and for a period of time during her youth, Ms. Robinson lived with Judge Wasilenko because of a tumultuous family situation. As Heather Robinson testified under penalty of perjury, her relationship with Judge Wasilenko was more like a father/daughter relationship. It is and was Judge Wasilenko's understanding that had Ms. Robinson presented the renewed vehicular registration to the clerk, the traffic ticket would have been dismissed as corrected.

COUNT THREE

Judge Wasilenko has known Casey Landis since Mr. Landis was about five years of age. Casey Landis was a casual acquaintance of Judge Wasilenko's daughter prior to 2000, and had visited Judge Wasilenko's residence with other school age friends on a few occasions.

On April 22, 2003, without notice to Judge Wasilenko or his counsel, Casey Landis was subpoenaed for a deposition in Yuba City,

California. During that proceeding, Mr. Landis was asked the following question and provided the following responses:

Q: How many times did you speak to Judge Wasilenko about this ticket before you went to court on it?

A: I think I spoke to him once to see if he could get this put in his courtroom or something, and he said, yeah, or – I can't even exactly remember his exact words, but somehow I think I spoke to him about me having the ticket and seeing if he could get it in his courtroom.

Q: Was this conversation with Judge Wasilenko in person or over the telephone?

A: I'm not positive, to tell you the truth. I couldn't say yes on either one of them. I'm not sure. It happened so long ago, I can't really remember the specific details like that.

Q: Do you remember if you were the one who initiated contact with him particularly for the purpose of talking about this ticket?

A: Yeah, I talked to him to see if he could get it in his room. I contacted him. He didn't contact me about it.

Q: And do you remember anything in particular that he told you?

A: Nothing really other than he'd see what he could do, if he could it put in his courtroom, and then nothing really after that except with the sentence that he gave me of community service.

Q: Did you tell him at that time during this initial conversation with him about the ticket, what you had received the ticket for?

A: I can't remember. I might have. I might not have. I cannot remember, to tell you the truth.

Q: During this initial conversation did he tell you what your possible sentence might be?

A: I don't think he did.

Judge Wasilenko is certain that someone brought to his attention that Landis was going to be appearing before him in traffic court on March 15, 2000, but cannot recall who that was. Judge Wasilenko was scheduled to hear traffic court, and did hear traffic court, on March 15, 2000. Judge Wasilenko did request that the court file be brought to his chambers, although it may have been in connection with the other matters that were coming to his department for the March 15, 2000 traffic calendar.

Judge Wasilenko has handled a traffic calendar since his election to the bench in November 1984. Generally speaking, there are four alternatives available to a party cited for a moving violation: pay the fine pursuant to the schedule; attend traffic school, but that requires the payment of the fine, along with the fee for traffic school (and some people cannot afford this alternative; spend some period of time in the county jail (which does avoid the payment of a fine); or perform a significant amount of community service.

Casey Landis did appear before Judge Wasilenko on March 15, 2000 and chose community service as an alternative to payment of a fine. In fact, the traffic walk-ins for that date as provided to the Commission on April 24, 2003 show several parties, not just Casey Landis, being ordered to perform community service in lieu of fines.

Judge Wasilenko has no recollection whatsoever of speaking with Casey Landis on or before March 14, 2000 regarding his ability to pay a fine. Casey Landis was ordered to perform a significant amount of community service. Performing community service is a benefit to the community and requires a fair amount of time and dedication on the part of

the person opting to perform the community service. In many ways, the service rendered to the community far exceeds the financial benefit from the money paid as a fine.

COUNT FOUR

The court files reflect that on September 22, 2000, Casey Landis was cited for violating California Vehicle Code §24252(a) for having a malfunctioning vehicle light. The court files also reflect that on October 29, 2000, Casey Landis was cited for violating California Vehicle Code §§16028(a), failing to possess evidence of insurance, and 24252, for the same malfunctioning vehicle light. Mr. Landis did not timely correct these citations and the court files reflect that DMV holds were placed on Casey Landis's license.

Judge Wasilenko recalls that he was hearing traffic matters in 2000 and 2001, therefore the Landis citations could have come before him in the ordinary course of judicial business.

Judge Wasilenko has no recollection of having an ex parte meeting with Casey Landis in chambers on March 26, 2001 regarding the aforementioned citation. The Yuba County Superior Court minutes reflect that "case called, defendant present, violations dismissed as corrected for FTA complete 16 hour AOWP as directed by court, hold to be released." This means that Landis appeared in court, the violations were dismissed as corrected and for the failure to appear, Landis was given 16 hours of community service and the holds on his driver's license were released.

In the deposition taken of Casey Landis by Commission attorneys on April 22, 2003, he testified he did not remember appearing before Judge Wasilenko on these infractions. Landis did remember, however, that he did

obtain proof of insurance and that the headlight on the vehicle was repaired. Landis further testified under oath that he took his vehicle to the Department of Motor Vehicles and had the correction "signed ... off."

The court minutes for March 26, 2001 do not reflect the judge who presided over the matter, although a hand written entry by Renee Davidson does state Judge Wasilenko presided over the matter. Judge Wasilenko has no specific recollection of this event. If Judge Wasilenko presided over the Landis matter and a DMV correction along with satisfactory proof of insurance had been provided, the traffic infractions would have been dismissed and the DMV hold would have been released. Judge Wasilenko would have given the same ruling for any other cited party under the same or similar circumstances.

COUNT FIVE

On August 10, 2001, Nathan Sokoloski was cited for knowingly driving a motor vehicle carrying an alcoholic beverage without being accompanied by a parent or a legal guardian while under the age of 21 years, and unlawfully having within the motor vehicle, liquor which had been opened and the seal broken and a portion of the contents partially removed.

Nathan Sokoloski was criminally charged with the aforementioned offenses and was released on his own recognizance on September 6, 2001 and ordered to report to court on September 12, 2001 for a continued arraignment.

On September 11, 2001, Judge Wasilenko continued the arraignment to November 1, 2001 for completion of Pathways and a youth alcohol program. The hearing date of September 12, 2001 was vacated. The

September 11, 2001 hearing may have taken place in Judge Wasilenko's chambers and Deputy District Attorney Veronica Henderson and private attorney Judd Waggoman "as a friend of the court" were present.

Prior the September 11, 2001 hearing, Judge Wasilenko had spoken with Jerry Sokoloski, the father of Nathan Sokoloski and was advised that Nathan Sokoloski was unable to attend the September 12, 2001 arraignment because of commitments he had relating to his fire fighting training schedule. On September 11, 2001, it is Judge Wasilenko's recollection that the deputy district attorney, Veronica Henderson, agreed to the continuance of the arraignment and the referral to Pathways and the youth alcohol program. It is the practice of the Yuba County District Attorney to have any youth charged with a minor, alcohol-related offense to attend a youth alcohol program and Pathways and upon successful completion of the program and return to court, the charges are normally dismissed.

Judge Wasilenko acknowledges that Nathan Sokoloski's unavailability was brought to his attention prior to the September 11, 2001 hearing through an ex parte communication with Jerry Sokoloski.

The clerk's docket and minutes of the Yuba County Superior Court reflect that on September 20, 2001, a further continuance of the arraignment date was set for March 5, 2002. Deputy District Attorney Veronica Henderson represented The People and Nathan Sokoloski was not present nor was he represented at that time by counsel. On March 5, 2002, Nathan Sokoloski appeared before Judge James Dawson on the continued arraignment and the charges were dismissed because of his completion of the Pathways/youth alcohol program.

Judge Wasilenko recalls one discussion with Jerry Sokoloski requesting a continuance of the court hearing because of Nathan Sokoloski's unavailability to complete the Pathways program. It is generally the district attorney who determines the disposition of a case, although Judge Wasilenko does not recall how or why the September 20, 2001 hearing came about.

COUNT SIX

Ryan Heenan was a passenger in the Sokoloski vehicle and was cited for violation of California Vehicle Code §23224(b). On September 5, 2001, the Yuba County District Attorney's Office filed a criminal complaint charging Mr. Heenan with violation of California Vehicle Code §23224(b).

The clerk's docket and minutes for September 6, 2001 indicate that Mr. Heenan failed to appear at his arraignment and that Judge Dawson, before whom the matter was set, continued the arraignment to October 25, 2001, set bail at \$500, and ordered that a warrant issue but stayed execution of the warrant until October 25, 2001. The clerk's docket and minutes for October 25, 2001 indicate that Mr. Heenan failed to appear before Judge Dawson who ordered the stay on the warrant dissolved. It is unknown whether a bench order was delivered to the Marysville Police Department for Mr. Heenan.

Judge Wasilenko is not personally acquainted with Ryan Heenan. It was brought to his attention that Ryan Heenan was a seasonal firefighter, had failed to appear for court hearings because he was out of county fighting fires and that as a result, a bench warrant had issued for his arrest. On or about November 5, 2001, Judge Wasilenko did meet with Mr.

Heenan, who explained chronologically what had occurred. The meeting took place in Judge Wasilenko's chambers and Judge Wasilenko requested the clerk to bring him the Heenan file. While Judge Wasilenko knew a warrant had issued, he was unaware the warrant had been delivered to the police department. He did recall the warrant and ordered Heenan released on his own recognizance in order to complete the youth alcohol program through Pathways. However, Judge Wasilenko recalls that District Attorney Henderson was aware of and approved and recommended the recall, reinstatement and extension of time to complete the youth alcohol program.

COUNT SEVEN

Judge Wasilenko agrees that on August 10, 2001, Timothy Goetz was a passenger in the vehicle driven by Nathan Sokoloski and received a citation for violating California Vehicle Code §23223(b). That on September 5, 2001, the Yuba County District Attorney's Office filed a criminal complaint charging Timothy Goetz with violation of California Vehicle Code §§23223(b) and 23224(b). Judge Wasilenko admits that on September 6, 2001, Timothy Goetz appeared before Judge Dawson at which time the arraignment was continued to November 1, 2001, pending a proof of completion of the youth alcohol program and that Mr. Goetz was released on his own recognizance at that time. In 2001, it was the practice of the Yuba County District Attorney's Office to have any youth charged with a minor, alcohol-related offense to attend a youth alcohol program at Pathways. Upon successful completion of the program and return to court, the charges were usually dismissed.

The court files reflect that on November 1, 2001, Timothy Goetz failed to appear for the continued arraignment and Judge Dawson ordered a warrant and set bail at \$5,000. The District Attorney, M. Kamber, moved to amend the complaint to include a charge of violation of Penal Code §1320(a).

Sometime prior to November 5, 2001, Judge Wasilenko believes he spoke with a clerk, who brought to his attention both the Goetz and the Heenan matters, advising Judge Wasilenko that both individuals were out of county fighting fires for the California Department of Forestry. Judge Wasilenko did request the Goetz court file, but does not know whether as a result of the request the warrant previously issued for Goetz's arrest was not sent to a law enforcement agency.

On November 5, 2001, Judge Wasilenko met with Timothy Goetz in chambers at which time his release on his own recognizance was reinstated and Goetz's arraignment was continued for proof of completion of the youth alcohol program at Pathways. Goetz's arraignment was continued to December 17, 2001 and admittedly at the November 5, 2001 chambers meeting, a representative of the district attorney was not present. However, Judge Wasilenko recalls that District Attorney Henderson was aware of and approved and recommended the recall, reinstatement and extension of time to complete the youth alcohol program.

COUNT EIGHT

The court files reveal that Anthony Franks was cited on December 11, 2001 for violating California Vehicle Code §14601.1(a). Judge Wasilenko may have met Anthony Franks but he has no recollection of him. In an interview with the Commission on Judicial Performance's staff

counsel, Anthony Franks stated he was a friend of Heather Robinson, who formerly lived at Judge Wasilenko's house. Judge Wasilenko has no reason to disbelieve this statement but has no recollection of Anthony Franks.

On March 6, 2002, Judge Wasilenko was presiding over the Yuba County Superior Court traffic and arraignment department. One of the matters called that morning was the case of People v. Jacqueline Shell Morris. Ms. Morris was representing herself in connection with a DUI charge. In open court and in the presence of Deputy District Attorney Veronica Henderson, Ms. Morris pleaded guilty to the charge and part of her sentence involved community service "as directed by the court." After the proceedings were completed, Ms. Morris went into chambers to discuss the community service she was to serve and at the time was accompanied by a male friend of hers. This individual is Anthony Franks.

After discussing the community service with Ms. Morris, Mr. Franks, who Judge Wasilenko did not recognize as having met before, mentioned that he had been cited for driving on a suspended license and there was probably a warrant out for his arrest because he failed to appear at a court appearance. Franks explained that he was unable to appear for the court appearance because he was in Butte County jail on the occasion of his scheduled court appearance. Judge Wasilenko believed he would have discussed the situation with Veronica Henderson and since he was hearing traffic matters that day, he called for Anthony Franks' file. It is generally accepted procedure in Yuba County that if someone does not appear for a court hearing because of incarceration in another facility, the bench warrant will be recalled and OR will be reinstated. Judge Wasilenko did recall the bench warrant and ordered Franks to be released on his own recognizance

pending a May 30, 2002 arraignment date. Judge Wasilenko recalls he would have discussed this procedure with Veronica Henderson and obtained her approval beforehand.

COUNT NINE

The court files reflect that Erin Porter received a citation for violating California Vehicle Code §22450(a) (failure to stop at a stop sign), California Vehicle Code §16028(a) (failure to possess evidence of insurance), and California Vehicle Code §4000(a) (expired registration).

Erin Porter is well known to Judge Wasilenko. She played on a girls' softball team that Judge Wasilenko coached. On those occasions when Judge Wasilenko sees Erin Porter or vice versa, they will engage each other in conversation.

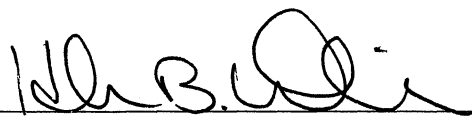
Judge Wasilenko adopts the testimony under oath that Erin Porter gave to the Commission's staff counsel regarding the circumstances surrounding the resolution of her traffic citations. On July 11, 2002, Erin Porter went to the Yuba County Courthouse for the purpose of paying the traffic fine for running a stop sign and had with her proof of insurance and proof of a valid registration. As Ms. Porter explained to the Commission attorney under oath: "What happened was, I went to the courthouse, and I didn't know what I was supposed to do, didn't know where I was supposed to go. So I went upstairs because they told me it was upstairs somewhere. And I saw Judge Wasilenko passing by, and I knew him, so I said, 'OK, well, what do I do.'" Erin Porter explained to Judge Wasilenko that it was her intention to pay the fine and she had proof of insurance and registration. Judge Wasilenko looked at the proof of insurance and registration, noted that the infraction had been corrected and Ms. Porter then went to the

The docket sheet further reflects that Ms. Kraus' matter was heard before Judge Wasilenko in chambers. According to the docket sheet, the matter was dismissed because proof of correction was provided by Ms. Krause.

Judge Wasilenko denies that his actions constituted an improper use of his judicial office to benefit a personal acquaintance and further denies that his actions were for any purpose other than the faithful discharge of his judicial duties. Judge Wasilenko believed that with proof to the satisfaction of the court that a correctable traffic offense had indeed been corrected, that he was empowered to dismiss the ticket regardless of whether it was in chambers or outside of chambers.

Dated: December 5, 2003

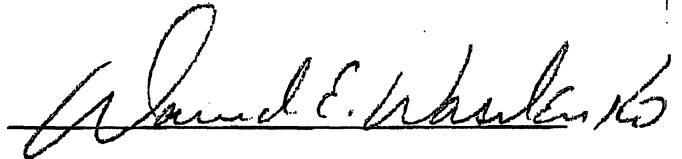
MURPHY, PEARSON, BRADLEY &
FEENEY

By 
HARLAN B. WATKINS
Attorneys for THE HONORABLE
DAVID E. WASILENKO

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VERIFICATION

I, **DAVID E. WASILENKO**, declare that I am the Responding Judge in the instant inquiry. That I have read the foregoing ANSWER TO NOTICE OF AMENDED FORMAL PROCEEDINGS, and know the contents thereof. That I believe the same to be true, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

DATED: 12-5-03A handwritten signature in cursive script, appearing to read "David E. Wasilenko", written over a horizontal line.**DAVID E. WASILENKO**

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CERTIFICATE OF SERVICE

I, Debbie A. Smith, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108-5530.

On December 5, 2003, I served the following document on the parties in the within action:

**ANSWER OF JUDGE DAVID W. WASILENKO
TO AMENDED NOTICE OF FORMAL PROCEEDINGS**

BY HAND: The above-described document will be placed in a sealed envelope which will be hand-delivered on this same date by SPINCYCLE LEGAL SERVICES, addressed as follows:

Jack Coyle
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660

Richard G. R. Schickele
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102-3660

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on December 5, 2003.

By: 
Debbie A. Smith